

NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL
CONSERVATION

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In the Matter of The Proposed Amendments to
6 NYCRR 700, 703, and 890
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June 7, 2018
2:00 p.m.

47-20 21st Street
Long Island City, New York

REPORTER: Suzanne Catalano

A P P E A R A N C E S:

DEPARTMENT OF ENVIRONMENTAL CONSERVATION
Office of Hearings & Mediation Services
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Albany, New York 12233

BY: MOLLY T. McBRIDE, Administrative Law Judge

DEPARTMENT OF ENVIRONMENTAL CONSERVATION
Bureau of Water Assessment and Management
Division of Water
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BY: SCOTT J. STONER, MS, Chief, Standards and
Analytical Support Section

Proceedings

1 MS. McBRIDE: We're going to get
2 started. Good afternoon, everyone. Can you
3 hear me okay in the back? I don't think you
4 need a microphone for me. Okay. Thank you
5 all for coming this afternoon. My name is
6 Molly McBride and I'm the Administrative Law
7 Judge with the New York State Department of
8 Environmental Conservation and I'll be
9 presiding over this afternoon's public
10 comment session.
11

12 Today we will be having a public
13 comment session regarding Amendment to Parts
14 700, 703 and 890 of Title 6 of the official
15 compilation of Codes, Rules, and Regulations
16 of the State of New York.

17 The purpose of this proposed
18 rulemaking is to amend Parts 700, 703, and
19 890 to adopt new standards to meet
20 requirements of federal law and to upgrade
21 the classifications of certain surface
22 waters in New York Harbor.

23 Written comments will be accepted by
24 the Department through June 12, 2018. And
25 the mailing address of the submission of the

Proceedings

written comment is available at our sign-in table here in front of the room.

The Department scheduled two public hearings to receive comments on this proposed rulemaking. The first hearing was held in the Department's Region 8 office in Avon, New York, on Tuesday, June 5th. And we are having a second hearing here today in the Department's Region 2 office.

Prior to the public comment hearings, the Department held two information sessions to meet with the public and answer any questions they had regarding this matter. Those meetings were held, and again, in the Region 8 office and the Department's Region 2 office.

The purpose of today's public comment session is to allow the public to comment on the proposed rulemaking and it is not a question-and-answer session. Anyone who wishes to speak today must fill out a public-speaker card. The cards are available at the DEC sign-in table here at the front of the room. If you have not yet

1 Proceedings

2 filled out a card, but would like to make a
3 statement, please come forward and fill out
4 a card for us. I will call the speakers in
5 the order that they filled out their card
6 here today. When I call the name, if I
7 mispronounce it, I apologize; please correct
8 me when you come forward. Speak into the
9 microphone when you come forward. If you
10 are speaking on behalf of a group, please
11 identify the name of the group that you are
12 presenting on behalf of.

13 If you have any questions for DEC
14 staff, I'm going to ask you to please
15 address or raise those questions outside of
16 today's public comment session. We have a
17 court reporter who is making a record of
18 today's comments so I would ask that you
19 please speak loudly, slowly, and clearly.
20 If you are reading your comments from
21 something you have written down, I would ask
22 that you please hand them to me after you
23 have read your comments into the record;
24 that will help the court reporter. We will
25 not be keeping them in the DEC file. It's

Proceedings

1 simply to help the court reporter prepare
2 the transcript so that we do have an
3 accurate record of the proceedings here
4 today.
5

6 If you do not wish to make an oral
7 record here today, you may submit your
8 comments in writing. Equal weight is given
9 to oral and written comments. Again, the
10 deadline for submission of written comments
11 is June 12, 2018.

12 Before we call the members of the
13 public to make their statements, I'd like to
14 ask Scott Stoner from the Division of Water
15 to give a brief presentation.

16 MR. STONER: Good afternoon. Can
17 you hear me okay? I'm Scott Stoner, Chief
18 of Standards and Analytical Support Section
19 in the Division of Water at the New York
20 State Department of Environmental
21 Conservation or DEC.

22 I have a short explanatory statement
23 about the proposed rulemaking that is the
24 subject of today's public hearing. The DEC
25 has proposed amendments to part 700, 703,

Proceedings

and 890 of Title 6 of the New York Codes and Rules and Regulations. The purpose of this proposed rule is to improve and protect water quality and meet requirements of the federal beaches environmental assessment and coastal health parenthetical BEACH Act of 2000.

Specifically, the proposed rule would add standards for E. coli for all fresh water coastal recreational waters that is the Great Lakes and add standards for Enterococcus for all marine coast recreation waters. The proposed rule would also upgrade the classification of certain class Roman Numeral I waters of Upper New York Bay and a portion of Lower New York Bay to class SB to add the best use of primary contact recreation to these waters.

The notice of proposed rulemaking was published in the New York State Register on March 21, 2018. A revised regulatory impact statement, regulatory flexibility analysis, and job impact statement was published in the New York Register on May

Proceedings

23rd reflecting updated coast information.

The DEC conducted two public information meetings for the proposed rule." One on May 1st at the DEC Region 2 office in Long Island City, right here, and the other on May 3rd at the DEC Region 8 office in Avon. Thank you.

MS. McBRIDE: Thank you. I'm going to start calling speakers. Again, I apologize if I mispronounce, please correct me when you come forward. Come forward and speak into the microphone. First, Peter Linderoth. Again, if you're representing a group, please identify the group.

MR. LINDEROTH: Good afternoon. I'm Peter Linderoth, Water Quality Program Manager for Save the Sound. Save the Sound is a bi-state program of Connecticut Fund for the environment with the offices in Mamaroneck, New York and New Haven, Connecticut. Our mission is to restore and protect Long Island Sound and its watershed. I appreciate the opportunity to testify today on behalf of Save the Sound and our

Proceedings

1 members.

2
3 Water quality monitoring is a core
4 component of Save the Sound's work. One of
5 our monitoring programs is a seasonal fecal
6 bacteria monitoring program, now in its
7 fifth year, which measures Enterococcus
8 levels at 53 stations in Esthete County and
9 Queens. We use the fecal indicator bacteria
10 Enterococcus for this program because it is
11 an EPA preferred and recommended fecal
12 indicator for marine and freshwater which
13 allows for better comparability between
14 water bodies.

15 Save the Sound, along with many
16 other community-based water quality
17 monitoring groups in New York State, has
18 been eagerly awaiting the publication of a
19 complete Triennial Review that includes an
20 update of all New York State Water Quality
21 Standards. We know that DEC conducted a
22 Triennial Review in 2012, set a deadline for
23 completion to adopt the final rule in 2014,
24 but has yet to complete the process.

25 We are pleased to now have a

Proceedings

proposal to update NYSWQS and there are many aspects of the proposed rule that we strongly support. Specifically, Save the Sound supports the reclassification of the coastal waters of New York Harbor from Class 1 to Class SB. The SB classification is a more accurate reflection of the primary contact uses that take place in these waters and will provide greater protection of public health.

We are also very supportive of the adoption of Enterococcus as the fecal indicating bacteria in the coastal recreational waters of the State. Recent science confirms that Enterococcus is a better indicator of pathogens that cause human illness than Fecal Coliforms or Total Coliforms, providing better public health protection in primary and secondary contact waterways.

Adopting this FIB will also result in SPDES permit changes, triggering a new round of investment to update wastewater treatment facilities. These investments

Proceedings

1 will directly improve water quality, protect
2 public health, and support the commercial
3 shell fishing industry, an important source
4 of jobs in many New York coastal
5 communities. On behalf of the coastal
6 communities of Long Island and Westchester,
7 we thank the DEC for strengthening the
8 NYSWQS.
9

10 However, some of our constituents
11 have been left behind due to the narrow
12 definition of the waterways where these new
13 and improved criteria will be applied.
14 Specifically, the residents of much of
15 coastal New York City, in the Bronx, Queens,
16 and on the East River.

17 Save the Sound urges the DEC to
18 adopt Enterococcus as the FIB for all
19 primary contact recreation waters in the
20 state. Having different criteria for
21 estuary waters and streams that flow into
22 marine waters will create an unnecessarily
23 confusing and complex management situation.

24 The proposed rule should not limit
25 the use of this superior FIB to a

Proceedings

DEC-defined "recreation season." If the plan is to revert to existing State criteria in the off-season, that will require the use of multiple FIB which is cumbersome and impractical for monitoring and management purposes.

Furthermore, we object to the longer duration for evaluating water quality in the proposed rule, specifically the 90-day geometric mean and Statistical Threshold Value. The EPA 2012 Recreational Water Quality Criteria directs states to use a duration for the GM and STV of no longer than 30 days in order to provide the best public health protection.

EPA further recommends that states consider the number of samples evaluated in order to minimize the possibility of incorrect use attainment decisions. The draft rule does not address the sample size that will be collected. A minimum sample size should be specified in the New York State Water Quality Standards.

I thank you for the opportunity to

Proceedings

1 submit this testimony today on behalf of
2 Save the Sound and our 5,000-plus members.
3 Thank you.

4 MS. McBRIDE: Thank you. Lawrence
5 Levine.

6 MR. LEVINE: Thank you. My name is
7 Lawrence Levine. I'm senior attorney and
8 director of Urban Water and Structure with
9 Natural Resources Defense Council. We're a
10 national and international environmental
11 advocacy organization. We work not only at
12 those levels but also at the state and
13 regional, and local levels as well. I work
14 specifically on water quality and urban
15 water quality issues in particular. They
16 have 30,000 members in New York State alone
17 and 13,000 members in New York City. On
18 their behalf, I appreciate the opportunity
19 to testify and kind of offer our comments
20 today and we will be offering detailed
21 comments in writing next week as well.

22 I'd like to echo the last speaker,
23 and I'm sure many of the speakers you hear
24 for the rest of the afternoon as well, in
25

Proceedings

1 first supporting the reclassification of
2 certain waters in the harbor and of finally
3 modernizing the indicator bacteria for
4 waters of E. coli bacteria to Enterococcus
5 bacteria, which has been the federally
6 recognized appropriate standards since 1986,
7 which is 32 years ago. That is an important
8 step forward. But it is not by itself
9 sufficient. Simply identifying the correct
10 indicators is not the same as what the
11 standard is of the maximum indicator that is
12 deemed safe and protective of human health.
13 Moreover, that indicator bacteria is not
14 proposed in this rule to be applied to all
15 of the waters where it needs to be applied.
16

17 I will go through a few points in
18 summary. First of all, DEC should adopt
19 criteria that match or exceeds EPA's 2012
20 recreational water criteria and should apply
21 all waters in the state designated for
22 primary contact recreation, not only to the
23 waters that fit the Federal Beach Act
24 definition of personal recreation waters.
25 EPA has said that explicitly to the DEC in a

Proceedings

1 letter dated May 9, 2016. And EPA
2 explicitly said, more recently said, in a
3 letter on March 7, 2018, which also said in
4 the earlier letters as well that Class 1 and
5 Class SD waters in New York City, in
6 particular, need to be covered. EPA has
7 spoken directly to those particular waters
8 which include most of the waters in New York
9 State left out from this proposal because
10 they are Class SD or Class I, left out are
11 the Hudson River, East River, Harlem River,
12 Arthur Kill, Bronx River, Hutchinson River,
13 Westchester Creek, Flushing Bay, Flushing
14 Creek, Alley Creek, Gowanus Canal, Newtown
15 Creek, Coney Island Creek, that all should
16 be carried to Jamaica Bay all of which are
17 fouled by bacteria and sewage and polluted
18 run-off when it rains in New York City. For
19 these waters, the proposal leaves in place
20 the decade-old standard that EPA, as I said,
21 directed the state to update.
22

23 The State has also said under the
24 General Clean Water Act principles that the
25 water quality criteria must be sufficient to

Proceedings

1 support and protect the designated uses.
2 These same standards need to apply to
3 primary contact waters statewide. It really
4 doesn't matter where someone is recreating.
5 They are going to get sick just as much if
6 they're in coastal water or great lake
7 waters if the water is polluted. And the
8 same science and same standards are equally
9 applicable inland.
10

11 Also, I note even if DEC limits this
12 proposal to BEACH Act, quote/unquote BEACH
13 Act waters, defined as coastal recreation
14 waters from the BEACH Act, the rule is still
15 too narrow. The said definition in federal
16 law excludes that waters that are upstream
17 of the mouth of a river, that's the boundary
18 line between coastal and non-coastal and
19 that particular definition. This proposal
20 considers the East River and the Harlem
21 River to be excluded. That East River
22 includes Flushing Bay as on the bounds of
23 the East River, the western part of Long
24 Island Sound. Those are tidal straights,
25 the East River and the Harlem River. They

Proceedings

are not rivers by scientific definition. Those water bodies are not upstream of the mouth of the river. They're not excluded. They're rather included in definition in the Federal BEACH Act in the coastal recreation waters. So that's in terms of the scope of where this rule applies.

Secondly, the timing in which this rule applies, as the last speaker said, should not be limited to a recreation season that's defined by default in this proposal, which is May to October and especially should not be subject to modification of that recreation season of when the rule applies by DEC on a unilateral basis without actually going through a process of a changing a rule or seeking a variance if needed. The proposal includes language that would allow DEC to unilaterally change that that recreation season on a case-by-case basis that's not appropriate.

The stringency of the standards the numeric limits included, rely on the weaker of the two options offered in EPA's 2012

Proceedings

1 Recreational Water Quality Criteria. The
2 proposal gives no reason for selecting the
3 less protective option. I would note that
4 the DEC has previously said that it intended
5 to select the more protective option.
6 There's no explanation of why that has
7 changed. Similarly, the proposal relies on
8 a 90-day geometric mean to measure
9 compliance with that numeric standard. That
10 is directly at odds with EPA's Recreational
11 Water Quality Criteria from 2012 which
12 provide for a 30-day geometric mean and
13 those criteria don't give an option between
14 30 and 90 days. But DEC has nonetheless
15 proposed a 90-day geometric mean that's less
16 protective and it allows temporary spikes in
17 bacteria levels that follow wet weather
18 events, follow rainfall. It allows those
19 spikes to be mapped more easily by a larger
20 number of cleaner samples. It measures
21 again a 90-day period. That is not
22 appropriate when we're talking about
23 protecting human health from acute exposure
24 and biotic pollution, which is what bacteria
25

Proceedings

in our waters is typically is.

The proposal also does not include a minimum sampling frequency to govern how that geometric mean is calculated. The current Fecal Coliform rules actually do have a minimum frequency because they do have a similarly have a geometric mean. The current rules have a minimum frequency of five samples per 30 days.

I'll note that the Department of Health sanitary code for beach testing also includes five samples per 30 days, also includes a 30-day geometric mean, I would say. There is no reason for DEC's regulations to be inconsistent with that. They both are intended to protect public health when people are recreating in the water. It doesn't matter if it's at a beach or not.

For similar reasons the sampling, whether it's at a beach or not, should be done near-shore, which is where people come in contact with the water and that needs to be how compliance is measured and that

Proceedings

should also be specified in the rule.

Finally, there are several provisions in the rule that actually weaken or they tend to include that standard as well year-round to allow DEC to unilaterally shorten that season, as, again, with Enterococcus and E. coli. And it again, allows permittees to circumvent the strict procedures to obtain a variance if DEC simply determines that disinfection is not necessary to protect public health; that's the quote from the proposal. No rationale is given for that since the entire purpose for this rule is to protect public health and to recognize bacteria above certain limits does not protect public health. There should not be a provision in here that allows DEC unilaterally to deviate from that and especially not one that allows DEC to do that without going through proper process of actually changing the standard or actually adopting a variance which require public hearing or require approval by EPA. Those are the issues we sincerely hope that DEC

Proceedings

1 will address each of these and will
2 strengthen the proposed rule before
3 finalizing and adopting it. That's
4 necessary to protect the public health.
5 That's something the public people who
6 recreate in the water, organizations who
7 restored our water for years, if not
8 decades, and it's something more that the
9 EPA has said to the State the State needs to
10 do. Thank you.

11 MS. McBRIDE: Thank you. Eymund
12 Diegel.

13 MR. DIEGEL: My name is Eymund
14 Diegel. I'm on the board of directors of
15 the Gowanus Dredgers Canoe Club. And we
16 provide free boating to the community and I
17 have such a direct stake in the rules that
18 you're proposing in the water quality of the
19 boating community we serve.

20 When I first came to New York City,
21 it was from South Africa where poverty
22 forces poor people to get pee and pooh
23 directly into their rivers. And I was a bit
24 baffled that the richest, most powerful city
25

Proceedings

1 in the world still does the same, that I'm
2 here today to ask that we set a water
3 quality standard that matches first world
4 city. However, that being said, over the
5 last decade the city and the state has made
6 huge improvements in our water quality
7 standard, something that I feel we need to
8 protect by setting the standards and the bar
9 higher. In this case the Enterococcus
10 supported by the EPA and we apply this, not
11 just parts of our recreation water bodies
12 but to all parts. The five most polluted
13 water bodies, if we fix those, we fix the
14 whole harbor. And as someone who runs 1500
15 canoe club trips on the canal every year, we
16 know directly what Coney Island whitefish
17 are all about. We know directly what Class
18 SD means. And we want that higher
19 swimmable-water-quality standard, however
20 crazy it sounds.

21 This morning I took water quality
22 samples using the Enterococcus standards.
23 And I ask that DEC support that standard so
24 that we have a higher standard quality norm.
25

Proceedings

1 And I ask that we use a standard year-round.
2 The city and the state are spending over 1.7
3 billion dollars clearing up the Gowanus
4 Canal site. And I would ask that the
5 standards protect that investment in the
6 interest of water bodies of the City as a
7 whole. Thank you.

8 MS. McBRIDE: Thank you. Erin
9 Doran.

10 MS. DORAN: Erin Doran on behalf of
11 Riverkeeper. Thank you for this opportunity
12 to provide comments on the Department's
13 proposed Rule. Riverkeeper is a
14 member-supported watchdog organization
15 dedicated to defending the Hudson River and
16 its tributaries. We also monitor and
17 protect the drinking water supply of nine
18 million New York City and Hudson Valley
19 residents.
20

21 As an initial matter, we
22 appreciate that the Department is proposing
23 to adopt water quality criteria based on
24 Enterococcus as the fecal indicator bacteria
25 for at least some waterways. Riverkeeper

Proceedings

also appreciates that the proposal to reclassify certain waters from Class I to Class SB would result in more stringent dissolved-oxygen standards for those waterways. However, while the proposed rule is a step in the right direction, it does not go far enough to protect people and wildlife from pollution.

Nearly every time it rains, raw sewage overflows into waterways around New York City and in other places that have infrastructure. In order to effectively address this problem, we need standards that are based on recent science and designed to protect people who come into contact with contaminated waters. Therefore, we urge the Department to adopt water quality standards consistent with the EPA's 2012 Recreational Water Quality Criteria for all primary contact recreation waters in the State.

Although the Department's proposed rule includes some aspects of the 2012 Recreational Water Quality Criteria, the new bacteria standards would only apply

Proceedings

1 to a limited set of waterways. That means
2 other waterways around New York City and
3 throughout the State would still be subject
4 to the Department's old,
5 scientifically-indefensible standards. In
6 addition, even the proposed new standards
7 fall short of EPA's recommendation.
8

9 First, the scope of the proposed
10 rule is insufficient. EPA has made it clear
11 that the Department should adopt water
12 quality standards consistent with the 2012
13 Recreational Water Quality Criteria for all
14 primary contact recreation waters in the
15 State, but the proposed rule fails to do so.
16 The only New York City waterways that would
17 be subject to the new Enterococcus standards
18 are coastal recreational waters of Class SA
19 and SB waterways, even though the
20 Department's regulations state that all
21 classes of saline-surface waters shall at
22 least be suitable for primary contact
23 recreation. The proposed rule similarly
24 limits the applicability of the new E. coli
25 standards for freshwater. In accordance

Proceedings

1 with EPA's clear directives, we urge the
2 Department to adopt water quality standards
3 consistent with the 2012 Recreational Water
4 Quality Criteria for all primary contact
5 recreation waters in the State.
6

7 Second, the Department should not
8 limit the applicability of the new bacteria
9 standards to the primary contact recreation
10 season. EPA's 2012 Recreational Waters
11 Quality Criteria do not provide for seasonal
12 limitations, and the Department has not
13 provided any rationale for applying the new
14 criteria on a seasonal basis, from May to
15 October, in certain waterways. The seasonal
16 limitation is particularly troubling in
17 light of the proposed rule's definition of
18 the primary contact recreation season, which
19 would allow the Department to unilaterally
20 shorten the season on a case-by-case basis.
21 We urge the Department to revise the
22 proposed rule so that the new bacteria
23 standards apply year-round.

24 Third, the Department should revise
25 the new bacteria standards to better protect

Proceedings

human health. EPA's 2012 Recreational Water Quality Criteria are based on recent science and designed to protect human health. While the Department must, at a minimum, adopt standards consistent with the 2012 Recreational Water Quality Criteria, we urge the Department to adopt EPA's recommended criteria that are most protective of human health. Specifically, the Department should adopt Enterococcus criteria with a geometric mean of 30 colony-forming units per 100 milliliters, and a statistical threshold value of 110 cfu per 100 milliliters. Additionally, consistent with the 2012 Recreational Water Quality Criteria, the Enterococcus criteria should be based on a 30-day, rather than a 90-day, interval. The proposed rule could also better protect human health by imposing a monitoring frequency for the new bacteria standards and specifying that sampling locations be near-shore to better capture the conditions where people are most likely to come into contact with contaminated waterways.

Proceedings

1
2 Fourth and finally, the Department
3 should not weaken the existing Total and
4 Fecal Coliform criteria. The proposed rule
5 erodes the existing criteria by imposing a
6 seasonal limitation, similar to the one
7 discussed previously for the new bacteria
8 standards, and by allowing permittees to
9 circumvent variance procedures by
10 demonstrating that disinfection is not
11 necessary to protect human health. The
12 existing criteria are already outdated, and
13 the Department should not water them down
14 further with this proposed rule.

15 In sum, we urge the Department to
16 adopt year-round standards that are
17 consistent with EPA's 2012 Recreational
18 Water Quality Criteria and that better
19 protect human health for all primary contact
20 recreation waters in the State. Thank you.

21 MS. McBRIDE: Thank you Korin
22 Tangtrakul.

23 MS. TANGTRAKUL: My name is Korin
24 Tangtrakul and I am a member of the
25 Stormwater Infrastructure Matters or SWIM

Proceedings

Coalition steering committee. Thank you for the opportunity to submit public testimony on the New York State Department of Environmental Conservation's proposed rulemaking to amend water quality standards for some New York City waterways.

SWIM is a diverse group of more than 70 community-based, citywide, regional, and national organizations, water recreation user groups, institutions of higher education, scientists, citizens and businesses who advocate for the health of New York City's vital waterways. SWIM is dedicated to ensuring swimmable and fishable waters around New York City through natural, sustainable stormwater management practices or green infrastructure in our neighborhoods.

The DEC existing standards rely on outdated indicators for bacteria contamination. New York State is one of the few remaining states in the nation that has not yet adopted the EPA's 2012 Recreational Water Quality Criteria. These

Proceedings

1 nationally-applicable standards are based on
2 Enterococcus as opposed to the outdated use
3 of the fecal coliform-based testing methods.
4 Enterococcus more accurately reflects
5 primary contact recreation safety, compared
6 to coliform and E. coli; is comparable
7 across fresh, salt brackish waters; and,
8 perhaps most importantly, is a federally
9 required minimum water quality criterion for
10 waters like those in New York City that are
11 polluted by Combined Sewer Overflows and
12 stormwater runoff.
13

14 Although DEC's proposed new
15 standards are based on more reliable
16 indicators, they would only apply to a
17 limited set of waterways. That means other
18 waters would still be subject to DEC's old,
19 scientifically indefensible standards. In
20 addition, even the proposed new standards
21 fall short of the Environmental Protection
22 Agency's recommended recreational water
23 quality criteria, which are designed to
24 protect human health. We believe DEC must
25 do better.

Proceedings

Specifically, our concerns are as follows:

First, The proposed rule is too limited in geographic scope. Modern, protective standards are needed for all NYC waters. DEC should adopt bacteria standards for Enterococcus consistent with EPA's 2012 RWQC for all primary contact recreation waters in the state, including class SD and I waters. This includes all marine and estuarine waters in New York City, including major rivers and tributaries. In New York City, the proposed rule covers only the harbor south of Governor's Island, Raritan Bay south of Staten Island, the Atlantic Ocean, Jamaica Bay, and Long Island Sound to the east of the Throgs Neck Bridge. The proposal leaves out the Hudson River, East River, Harlem River, the north and west shores of Staten Island, Gowanus Canal, Newtown Creek, Coney Island Creek, and tributaries of Jamaica Bay, all of which are tidal waters fouled by bacteria from sewage and polluted runoff when it rains. For

Proceedings

these waters, the proposal leaves in place decades-old standards, which EPA has directed the state to update because they do not reflect current science and do not protect public health. The exclusion of these waters is unjustified.

The proposed rule should not limit the applicability of the new bacteria standards to a DEC-defined recreation season. DEC proposes that the standards will be applicable only during the recreation season from May to October. Moreover, DEC could alter these dates at its discretion. EPA's 2012 Recreation Water Quality Criteria do not provide for seasonal standards, but instead impose standards year-round. People engage in primary contact activities outside of the defined recreation season that put them in contact with these water bodies. Even if seasonal standards were appropriate, DEC should not be allowed to unilaterally alter the defined recreational season on a case-by-case basis, as the draft rule would allow. A variable

Proceedings

1 recreation season, in which not only are
2 exceedances of water quality standards
3 acceptable in the off season, but
4 exceedances could be acceptable during what
5 DEC typically considers the recreation
6 season, will confuse and endanger those who
7 use the water year-round, especially during
8 the weeks surrounding what DEC proposes to
9 define as a recreational season. DEC should
10 impose bacteria standards year-round.
11

12 The new bacteria standards should be
13 more stringent to better protect human
14 health. DEC should adopt an Enterococcus
15 limit of 30 colony forming units per 100
16 milliliters geometric mean and 110 colony
17 forming units per 100 milliliters
18 statistical threshold value, which is more
19 protective of two alternatives in the 2012
20 Recreation Water Quality Criteria, rather
21 than 35 colony forming units per 100
22 milliliters for the geometric mean and 130
23 statistical threshold value, which is the
24 less protective in the 2012 Recreation Water
25 Quality Criteria.

Proceedings

DEC should also adopt a 30-day, instead of a 90-day, geometric mean, so that spikes in bacterial levels that occur after a rainfall are not so easily averaged-out by cleaner samples taken over a long period of time. EPA's 2012 Recreation Water Quality Criteria require such a 30-day geometric mean. To prevent regulated entities from gaming the system, DEC must specify a minimum sampling frequency for Enterococcus of at least five samples per 30 days. This would ensure that samples are spread over a representative sample of weather conditions and that there are enough samples to determine compliance with the statistical threshold value criterion, which provides that no more than 10 percent of individual samples within the averaging period may exceed a certain bacteria level. It is due to this same reasoning that the existing Fecal Coliform standards provide a minimum sampling frequency. There is no justification to promulgate the proposed Enterococcus standards without such a

Proceedings

1 mandated frequency. Additionally, DEC
2 should specify that sampling locations must
3 be near-shore so that the results accurately
4 reflect the conditions where people are most
5 likely to come into contact with the
6 waterway, rather than the center of the
7 channel that may fail to identify effects
8 from local CSOs.
9

10 The proposed rule improperly weakens
11 the existing total and Fecal Coliform
12 standards. The rule would limit the
13 applicability of existing standards to the
14 primary contact recreational season,
15 allowing DEC to unilaterally shorten the
16 defined May through October recreational
17 season on a case-by-case basis. The
18 proposed rule would also allow permittees to
19 circumvent the strict procedures to obtain a
20 variance from standards, including EPA
21 approval, based on a determination by DEC
22 that disinfection is not necessary to
23 protect human health. DEC must not roll
24 back existing protections for these waters.
25

Thank you again for the opportunity

Proceedings

1 to provide this testimony for the public
2 record. We concur with and support the
3 testimony of our fellow advocacy
4 organizations Riverkeeper, Natural Resources
5 Defense Council, the Bronx River Alliance
6 and Save the Sound.
7

8 MS. McBRIDE: Thank you. Amy
9 Motzny.

10 MS. MOTZNY: My name is Amy Motzny.
11 I am the Watershed Project manager for the
12 Gowanus Canal Conservancy. The Gowanus
13 Canal Conservancy is dedicated to
14 facilitating the development of a resilient,
15 vibrant, open, space network centered on the
16 Gowanus Canal through activating and
17 empowering community stewardship of the
18 Gowanus Watershed. Since 2006, we have
19 served as the environmental steward for the
20 neighborhood through leading grassroots
21 volunteer project; educating students on
22 environmental issues and working with
23 agencies, elected officials and the
24 community to advocate for, build and
25 maintain innovative green infrastructure

1 Proceedings
2 around the Gowanus Canal.

3 Thank you for the opportunity to
4 submit public testimony on the New York
5 State Department of Environmental
6 Conservation's proposed rulemaking to amend
7 water quality standards for some New York
8 City waterways.

9 In agreement with SWIM Coalition and
10 other New York City water organizations and
11 stakeholders, the Gowanus Canal Conservancy
12 supports the DEC's decision to adopts new
13 water quality standards based on more
14 reliable indicators based on Enterococcus
15 species, rather than the outdated use of
16 Fecal Coliform. However, we similarly feel
17 that the proposed amendments:

18 Fall short of the EPA's 2012
19 Recreation Water Quality Criteria for all
20 primary contact recreation waters in the
21 State, which are designed to protect human
22 health; are severely limited in their
23 geographic scope, leaving out the Gowanus
24 Canal and other impaired water bodies in the
25 region; should not be limited in their

Proceedings

applicability to a DEC-defined recreation season; should be more stringent to better protect human health.

The Gowanus Canal Conservancy urges DEC to extend new water quality standards that are consistent with the EPA's recommendations and based on Enterococcus and E. coli to the Gowanus Canal and other regional waterways including, Hudson River, East River, Harlem River, the north and west shores of Staten Island, the Bronx River, Hutchinson River, Westchester Creek, Flushing Bay, Flushing Creek, Alley Creek, Newtown Creek, Coney Island Creek, and tributaries of Jamaica Bay, all of which are fouled by bacteria from sewage and polluted runoff when it rains. The Gowanus Canal alone receives more than 377 mg of combined sewage overflow throughout the entire year, demonstrating a critical need for year-round water quality compliance. The Gowanus Canal is home to an active boating community and serves a diverse and engaged community that is facing rapid growth and immense change.

Proceedings

1 The people of Gowanus deserve a clean,
2 healthy and accessible water body that
3 promotes public health and supports
4 year-round recreation. Thank you.

5 MS. McBRIDE: Thank you. Edith
6 Kantrowitz.

7 MS. KANTROWITZ: My name is Edie
8 Kantrowitz. I am with New York City Friends
9 of Clearwater, and with United for Action.
10 I would like to commend the DEC's decision
11 to propose new water quality standards for
12 some New York waterways. However, these
13 standards, while they appear to be a step in
14 the right direction, need to be more
15 stringent, and more widely encompassing, if
16 we are to protect humans and wildlife from
17 sewage pollution in the waterways around New
18 York City, and throughout the State.

19 It does not make sense to implement
20 bacteria standards that only apply to a
21 defined recreation season from May to
22 October. New Yorkers engage in recreational
23 and other activities throughout the year
24 that may put them in contact with the
25

Proceedings

1 rivers, bays and other waters that are part
2 of our city. The currently proposed draft
3 also allows the DEC to unilaterally change
4 the time period in which water quality
5 standards apply on a case-by-case basis.
6 This philosophy of time limitation is
7 actually a step backwards, it is not
8 recommended by the EPA, and it is
9 unacceptable if we are to take our water
10 quality protection seriously. All DEC
11 bacteria standards, without exception,
12 should apply year-round.
13

14 The current proposal also calls for
15 a 90-day geometric mean sampling period for
16 Enterococcus and E. coli standards. This is
17 not sufficient sampling frequency; in fact,
18 the EPA has recommended a 30-day geometric
19 standard, and this is the frequency that
20 should be adopted. This more frequent
21 sampling is essential to help ensure that
22 spikes in bacterial count which may take
23 place after a rainfall are not obscured and
24 averaged out by readings taken on cleaner
25 days during the 90-day period.

Proceedings

The Enterococcus standards should also specify at least five samples per 30-day period. Currently, this requirement only applies to E. coli. Furthermore, the Enterococcus standard should adopt the more protective values suggested by EPA, a limit of geometric mean 30 and statistical threshold value 110, rather than the less protective values of geometric mean 35 and statistical threshold 130.

Also, DEC should require that samples be taken near the shore, since that is where people are most likely to come into contact with the water.

Another major problem with the proposed standards is that they do not cover all of the water in and surrounding New York City. The currently proposed rule would apply only to New York Harbor south of Governor's Island, Raritan Bay south of Staten Island, the Atlantic Ocean, Jamaica Bay, and Long Island Sound to the east of Throgs Neck Bridge. It would not include the Hudson River, the Hutchinson River,

Proceedings

Westchester Creek, Flushing Bay and Flushing Creek, Alley Creek, Gowanus Canal, Newtown Creek, Coney Island Creek, and the tributaries of Jamaica Bay.

These waterways, however, are used by New Yorkers for recreational and other purposes, and they are typically fouled by sewage and other pollution after it rains. Yet under the current proposal they would be covered only by the existing outdated standards based on total and fecal coliforms and would not benefit from the new standards. We deserve adequate protection for all of our waters. In fact, the EPA has actually directed the State to update the older standards because they do not reflect current scientific knowledge, and they do not adequately protect public health.

The DEC should therefore protect New York's waters by adopting bacteria standards consistent with the EPA's 2012 Recreational Water Quality Criteria. These more stringent criteria should apply to all of our waterways, and they should apply

Proceedings

1 throughout the entire year. Thank you for
2 this opportunity.

3 MS. McBRIDE: Thank you. Matt
4 Malina.

5 MR. MALINA: Good afternoon. My
6 name is Matt Malina. I'm the director of
7 NYC H2O. We're a nonprofit that provides
8 education programs for thousands of New
9 Yorkers teaching them about the New York
10 City water system and ecology. We bring
11 hundreds of students and families to beaches
12 all around New York City and in direct
13 contact with the water. So to protect the
14 kids that we work with and our staff, we ask
15 that the DEC use the Enterococcus test as a
16 standard. It's more modern science, use the
17 same standards for all the water body. The
18 testing should be done all year round, not
19 just the recreation season. The fish are
20 living in there all the year round. And the
21 30-day geometric means should be adopted,
22 not the 90-day to smooth over any spikes in
23 any pollution or sewage getting in the
24 waters.
25

Proceedings

1 Why is more testing something we're
2 in favor of? The more data you have, the
3 more better chance you'll have in finding
4 illegal sewer connections, which
5 unfortunately still happen today. There was
6 a very bad one found in Coney Island Creek a
7 few months ago that was coming in from a
8 large apartment complex called the Beach
9 Haven Apartments. It took, not the DEC, but
10 it took the DEP almost six months to figure
11 out where the sewage was coming from. So
12 having more data will help to find those
13 illegal connections.

14 I will note that there is still
15 illegal connections and raw sewage floating
16 into the Coney Island Creek. And the DEP
17 still has not found it. So the more clues
18 they have, the more testing can happen, the
19 better shot that we'll be able to nip that
20 in the bud.

21 I'll also add that, NYC's
22 beneficiary of an environmental benefit
23 program through the DEC, Atlantic Creek,
24 where there was an illegal sewer connection
25

Proceedings

1 and thanks to testing and the good work you
2 and your colleagues do, they were able to
3 stop that. And we are then able to provide
4 education programs to teach kids about the
5 creek and how stormwater can be managed in a
6 natural way, so more testing. Thank you.

7 MS. McBRIDE: Thank you.

8 That was our last speaker card.
9 Anyone else here would like to make a
10 comment on the record? I'll remind you that
11 the comment period stays open until June 12,
12 2018. So you may submit written comments
13 until that day. And we have the contact
14 information at the table here near the
15 doorway. Thank you all for coming out here
16 today.

17 (Time noted: 2:50 p.m.)
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Proceedings

C E R T I F I C A T E

I, SUZANNE CATALANO, a
shorthand reporter and Notary Public within
and for the State of New York, do hereby
certify:

That the within proceedings is
a true and accurate record of the
stenographic notes taken by me.

I further certify that I am not
related to any of the parties to this action
by blood or marriage, and that I am in no
way interested in the outcome of this
matter.

SUZANNE CATALANO